

## CALIFORNIA ENERGY COMMISSION

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December 2, 2003

Mr. Michael C. Genest  
Chief Deputy Director  
Department of Finance  
State Capitol, Room 1145  
Sacramento, CA 95814

**Subject: Exception to Executive Order S-2-03 for Data Collection for  
Qualified Departing Load Exemptions**

Dear Mr. Genest:

On November 20, 2003, Director of Finance Donna Arduin sent to Agency Secretaries and Agency Counsel a memorandum on exceptions to Executive Order S-2-03: Regulatory Review. Pursuant to that Memorandum, the California Energy Commission (Energy Commission) requests an exception for recently adopted regulations on data collection for qualified departing load exemptions. These regulations relate to rate surcharges that the California Public Utilities Commission (CPUC) has approved for customers of the state's investor owned utilities, and customers departing from the investor owned utilities through installation of self-generation. These surcharges are designed to pay the cost of long-term power purchase contracts entered into by the Department of Water Resources in 2001 when the utilities lost their creditworthiness during the state's energy crisis. The regulations adopted by the Energy Commission help clarify who will qualify for an exemption from these surcharges when they install their own generation and thus reduce their existing load requirements on the utilities.

The Energy Commission has broad authority and responsibilities to collect data for the purposes stated in Public Resources Code sections 25216(b), 25216.5(c) and (d), and 25320. Section 25320 directs the Energy Commission to manage an extensive data collection system to serve, among legislative objectives, the "information and policy development needs" of other agencies, market participants, and the public. (See Public Resources Code § 25300(d).) The Energy Commission and the CPUC have worked together closely to define how the Energy Commission might assist the CPUC in determining who qualifies for an exemption, and this rulemaking is the result of that coordinated effort.

Given the current energy climate in California it is critical for businesses to have as much certainty as possible when investing in energy options. Businesses seeking to install customer generation must consider all economic factors, including whether they will or will not be exempt from paying customer responsibility surcharges (CRS). In order for California businesses to maintain energy options that are economically beneficial, there must be a process in place to determine who qualifies for the exemptions to CRS allowed by the CPUC in Decision 03-04-030. The Energy Commission, as the lead energy data collection entity in the state, was the logical agency to collect and process data that would allow for determination of exemption qualification.

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On October 22, 2003, the Energy Commission adopted regulations on data collection for qualified departing load CRS exemptions. The regulations allow the Energy Commission to collect data that will allow for determination of eligibility for CRS exemptions that the CPUC authorized in Decision 03-04-030. The Energy Commission filed the adopted regulations with the Office of Administrative Law (OAL) on November 14, 2003.

The Energy Commission believes there is good cause for granting this rulemaking an exception from Executive Order S-2-03. If this rulemaking is delayed, there will be an adverse impact to business because investors in self-generation facilities cannot risk capital until they know if an exemption from CRS responsibility for the facilities will be available. Without being able to fully consider all economic implications of such investments the distributed generation industry will face uncertainty. California public utilities also have an interest in timely implementation of the adopted regulations. The utilities are charged with collecting CRS from appropriate customers. In order to prepare accurate bills and ensure timely recovery of CRS, the rules that allow for determination of exemptions need to be put in place as quickly as possible. In sum, implementing the CRS exemption regulations as soon as possible will save both distributed generation users, and California ratepayers, time and money.

The rulemaking occurred in a public process with active participation by many stakeholders. No stakeholders objected to the adoption of the regulations; indeed, all stakeholders, including those with usually opposing interests, urged the Energy Commission to adopt the regulations and not place further delays on the process. Attached to this request are several letters from stakeholders expressing their concerns related to the potential delay of the proposed regulations, and support for an exception to Executive Order S-2-03. Also attached to this request is a copy of the Energy Commission's Adoption Order for the proposed rules, setting forth the Energy Commission's findings related to economic impact, including impacts on business. The Energy Commission found that the regulations will not have an adverse impact on business, and that in fact the regulations will provide benefits to California businesses: certainty for the distributed generation industry and necessary financial information for potential customers and investors.

The Energy Commission requests that the Director of Finance grant this exception, and allow the data collection regulations to move through the OAL process as quickly as possible. If you have any questions, please call me at (916) 654-4996. Thank you for your consideration of this important matter.

Sincerely,

SCOTT W. MATTHEWS  
Chief Deputy Director

cc: Fred Klass, Department of Finance  
Peter J. Siggins, Governor's Office Legal Affairs Secretary  
John Smith, Office of Administrative Law

Enclosures